APPEAL NO. 010245

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 2001. At the CCH, the hearing officer heard evidence concerning three separate dates of injury. In regard to the first date of injury, the parties stipulated that on or about _____, the appellant (claimant herein) sustained a compensable injury to her right ankle, and the hearing officer concluded that this injury did not extend to an injury of the claimant's low back. With regard to the second date of injury, the hearing officer concluded that the claimant did not sustain a compensable injury on _____; that the respondent (carrier herein) properly contested compensability of the alleged injury; and that the claimant did not have disability. Finally, regarding the third date of injury, the hearing officer concluded that the claimant did not sustain a compensable injury on _____, and that the claimant did not have disability. The claimant appeals all of the adverse findings of the hearing officer, arguing that they are contrary to the evidence. The carrier responds that all of the findings of the hearing officer were sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. This is also true of the extent of an injury. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard we find sufficient evidence to support the hearing officer's determination that the claimant's _____, injury, did not extend to her low back. The claimant argues on appeal her contention that this injury did extend to her low back and states that her argument is supported by evidence including her testimony, witness statements and medical reports. However, the claimant had the burden to prove the extent of her injury and it was the province of the hearing officer to determine what weight to give to the evidence.

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present, case the hearing officer found no injury on _____, or on _____, contrary to the testimony of the claimant. The claimant had the burden to prove that she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The claimant contends that the carrier failed to properly dispute her alleged _____, injury. The hearing officer found that the carrier received notice of this injury on _____, and contested the compensability of injury on _____, and therefore the carrier properly contested the compensability of the alleged injury. We find sufficient evidence to support this finding.

Finally, with no compensable injury found on _____ or _____, there is no compensable loss upon which to find disability for these dates of injury. By definition, disability depends upon a compensable injury. *See* Section 401.011(16). We therefore find no error in the hearing officer’s finding of no disability for these two alleged dates of injury.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge